

By: Swanson

H.B. No. 44

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to civil liability and criminal penalties for performing  
3 certain abortions; providing civil penalties; creating criminal  
4 offenses.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 71.002, Civil Practice and Remedies  
7 Code, is amended by adding Subsection (f) to read as follows:

8 (f) A person is liable for damages arising from a violation  
9 of Section 170.002(a), 171.043, 171.044, 171.102, or 171.152,  
10 Health and Safety Code.

11 SECTION 2. Section 71.004(b), Civil Practice and Remedies  
12 Code, is amended to read as follows:

13 (b) The surviving spouse, children, and parents of the  
14 deceased may bring the action or one or more of those individuals  
15 may bring the action for the benefit of all. A next friend may bring  
16 an action for damages under Section 71.002(f).

17 SECTION 3. Chapter 170, Health and Safety Code, is amended  
18 by adding Sections 170.003 and 170.004 to read as follows:

19 Sec. 170.003. CRIMINAL PENALTY. (a) A person who violates  
20 Section 170.002(a) commits an offense.

21 (b) An offense under this section is a felony of the second  
22 degree, except that the offense is a felony of the first degree if  
23 the person has previously been convicted of an offense under this  
24 section or under Section 171.049, 171.103, or 171.153.

1       (c) If conduct constituting an offense under this section  
2 also constitutes an offense under another section of this code or  
3 the Penal Code, the actor may be prosecuted under this section or  
4 under both sections.

5       Sec. 170.004. CIVIL PENALTY. (a) A person who violates  
6 Section 170.002(a) is liable to this state for a civil penalty of  
7 \$30,000 for each violation.

8       (b) The attorney general may sue to collect the penalty.

9       (c) The attorney general shall file an action under this  
10 section in a district court in Travis County or the county in which  
11 the violation occurred.

12       (d) The attorney general may recover reasonable expenses  
13 incurred in obtaining a civil penalty under this section, including  
14 court costs, attorney's fees, investigative costs, witness fees,  
15 and deposition expenses.

16       SECTION 4. Subchapter C, Chapter 171, Health and Safety  
17 Code, is amended by adding Sections 171.049 and 171.050 to read as  
18 follows:

19       Sec. 171.049. CRIMINAL PENALTY. (a) A person who violates  
20 Section 171.043 or 171.044 commits an offense.

21       (b) An offense under this section is a felony of the second  
22 degree, except that the offense is a felony of the first degree if  
23 the person has previously been convicted of an offense under this  
24 section or under Section 170.003, 171.103, or 171.153.

25       (c) If conduct constituting an offense under this section  
26 also constitutes an offense under another section of this code or  
27 the Penal Code, the actor may be prosecuted under this section or

1 under both sections.

2 Sec. 171.050. CIVIL PENALTY. (a) A person who violates  
3 Section 171.043 or 171.044 is liable to this state for a civil  
4 penalty of \$30,000 for each violation.

5 (b) The attorney general may sue to collect the penalty.

6 (c) The attorney general shall file an action under this  
7 section in a district court in Travis County or the county in which  
8 the violation occurred.

9 (d) The attorney general may recover reasonable expenses  
10 incurred in obtaining a civil penalty under this section, including  
11 court costs, attorney's fees, investigative costs, witness fees,  
12 and deposition expenses.

13 SECTION 5. Section 171.103, Health and Safety Code, is  
14 amended to read as follows:

15 Sec. 171.103. CRIMINAL PENALTY. (a) A person who violates  
16 Section 171.102 commits an offense.

17 (b) An offense under this section is a felony of the second  
18 degree, except that the offense is a felony of the first degree if  
19 the person has previously been convicted of an offense under this  
20 section or under Section 170.003, 171.049, or 171.153 [~~state jail~~  
21 felony].

22 (c) If conduct constituting an offense under this section  
23 also constitutes an offense under another section of this code or  
24 the Penal Code, the actor may be prosecuted under this section or  
25 under both sections.

26 SECTION 6. Subchapter F, Chapter 171, Health and Safety  
27 Code, is amended by adding Section 171.1045 to read as follows:

1       Sec. 171.1045. CIVIL PENALTY. (a) A person who violates  
2 Section 171.102 is liable to this state for a civil penalty of  
3 \$30,000 for each violation.

4       (b) The attorney general may sue to collect the penalty.

5       (c) The attorney general shall file an action under this  
6 section in a district court in Travis County or the county in which  
7 the violation occurred.

8       (d) The attorney general may recover reasonable expenses  
9 incurred in obtaining a civil penalty under this section, including  
10 court costs, attorney's fees, investigative costs, witness fees,  
11 and deposition expenses.

12       SECTION 7. Section 171.153, Health and Safety Code, is  
13 amended by amending Subsection (b) and adding Subsection (c) to  
14 read as follows:

15       (b) An offense under this section is a felony of the second  
16 degree, except that the offense is a felony of the first degree if  
17 the person has previously been convicted of an offense under this  
18 section or under Section 170.003, 171.049, or 171.103 [~~state jail~~  
19 felony].

20       (c) If conduct constituting an offense under this section  
21 also constitutes an offense under another section of this code or  
22 the Penal Code, the actor may be prosecuted under this section or  
23 under both sections.

24       SECTION 8. Subchapter G, Chapter 171, Health and Safety  
25 Code, is amended by adding Section 171.1535 to read as follows:

26       Sec. 171.1535. CIVIL PENALTY. (a) A person who violates  
27 Section 171.152 is liable to this state for a civil penalty of

1 \$30,000 for each violation.

2 (b) The attorney general may sue to collect the penalty.

3 (c) The attorney general shall file an action under this  
4 section in a district court in Travis County or the county in which  
5 the violation occurred.

6 (d) The attorney general may recover reasonable expenses  
7 incurred in obtaining a civil penalty under this section, including  
8 court costs, attorney's fees, investigative costs, witness fees,  
9 and deposition expenses.

10 SECTION 9. The changes in law made by this Act apply only to  
11 a cause of action that accrues on or after the effective date of  
12 this Act. A cause of action that accrues before the effective date  
13 of this Act is governed by the law applicable to the cause of action  
14 immediately before that date, and that law is continued in effect  
15 for that purpose.

16 SECTION 10. The changes in law made by this Act apply only  
17 to an abortion performed, induced, or attempted on or after the  
18 effective date of this Act. An abortion performed, induced, or  
19 attempted before the effective date of this Act is governed by the  
20 law in effect immediately before the effective date of this Act, and  
21 the former law is continued in effect for that purpose.

22 SECTION 11. This Act takes effect September 1, 2021.